

FIRST PROGRESS REPORT:

LEGAL FRAMEWORK FOR THE CREATION, OPERATION, FINANCING, AND DISSOLUTION OF NONPROFIT CIVIL ENTITIES IN THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES

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1. Background

During its 98th regular period of sessions (April 5-9, 2021), the Inter-American Juridical Committee (CJI) of the Organization of American States (OAS) approved the following item to be included on its agenda: *Development of Inter-American principles on the legal framework for the creation, operation, financing, and dissolution of nonprofit civil entities* (document CJI/doc.629/21). The aim was to systematize and develop inter-American principles, standards, and good practices on the legal framework for the creation, operation, financing, and dissolution of nonprofit civil entities, so as to contribute to the harmonization of national laws in the region.

According to Article 16 of the American Convention on Human Rights (American Convention), “everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” Freedom of association is thus a right that every person or group of persons has to create organizations, whether formal or informal, to collectively act, express, promote, exercise, or defend a broad range of legitimate purposes of common interest, publicly or privately, subject only to “such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.”

Under the American Convention, States have the obligation to protect and respect all the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination. States also must adopt, in accordance with their constitutional processes, any provisions of domestic law, whether of a legislative or other nature, as may be necessary to give effect to those rights and freedoms (Article 2). Consequently, States have the duty to adopt an enabling legal, political, and administrative framework, one that is appropriate and necessary to ensure the development of civil society organizations throughout their life cycle—in other words, the creation, operation, financing, and dissolution of nonprofit civil associations or entities—to allow them to exercise their freedom of association in keeping with the values of a democratic society.

This is now a global concern, and international standards specific to this issue have been adopted at the universal and regional level over the past decade. The [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), presented in 2012 on the situation of freedom of association, states that “the right to freedom of association ranges from the creation to the termination of an association, and includes the rights to form and to join an association, to operate

*freely and to be protected from undue interference, to access funding and resources and to take part in the conduct of public affairs.”*¹

In the European context, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Council of Europe’s Commission for Democracy through Law (Venice Commission) adopted the [Guidelines on Freedom of Association](#) in January 2015. The purpose of the guidelines is to promote the formation and existence of civil society associations, making it possible for them to operate in a way that is consistent with democratic principles, and to ensure that applicable national legislation “*is drafted with the purpose of promoting the establishment and existence of associations, enabling their operation and facilitating their aims and activities.*”² Moreover, as the European Court of Human Rights has stated, *the protection afforded by the right to freedom of association “lasts for an association’s entire life.”*³

Likewise, in 2017, the African Commission on Human and Peoples’ Rights published its [Guidelines on Freedom of Association and Assembly in Africa](#), to strengthen the promotion and protection of these rights across the African continent. The guidelines establish that: “*National legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.*”⁴

In our region, the inter-American system has lagged somewhat behind with regard to these developments, which calls for a process to systematize, update, and consolidate the standards developed in the region. In 1984, the CJI—as part of its work of harmonizing, codifying, and developing private international law—promoted the adoption of the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law. Article 2 establishes that “*the existence, capacity to have rights and obligations, operation, dissolution, and merger of a private juridical person are governed by the law of the place of its organization.*” However, little progress has been made in developing inter-American guidelines on the content and approach that should characterize laws governing private persons, especially in the case of civil and nonprofit legal persons.

Some principles of interpretation on this matter can be found in the compilation of the Inter-American Commission on Human Rights (IACHR) published a decade ago in the [Second Report on the Situation of Human Rights Defenders in the Americas](#). The report establishes, for example, that “*the right to associate freely without interference requires that States ensure that...legal requirements not impede, delay, or limit the creation or functioning of these organizations,*” and ensure that the procedure for registering organizations “*is for declarative purposes but not to authorize or legalize their existence.*”⁵

In the practice and implementation of legislative frameworks, the region’s civil society organizations face related legal obstacles throughout their life cycle, due to a gradual process in which some countries have been moving away from the international human rights standards that apply to this area. It is in this context that in June 2011, the General Assembly of the Organization of American

¹ United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27), May 21, 2012, paras. 63 and 64.

² Organization for Security and Co-operation in Europe (OSCE) and Council of Europe’s Commission for Democracy through Law (Venice Commission), Guidelines on Freedom of Association, Warsaw, 2015, [ISBN 978-92-9234-906-6](#).

³ European Court of Human Rights (ECHR), *United Communist Party of Turkey and Others vs. Turkey*, No. 19392/92, para. 33.

⁴ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, November 10, 2017.

⁵ Inter-American Commission on Human Rights (IACHR), Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, December 31, 2011, para. 163 and p. 234.

States (OAS) approved Resolution No. 2680, “Promotion of the Rights to Freedom of Assembly and of Association in the Americas,” which calls upon member states to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, and to take all necessary measures to ensure the free exercise of both of these rights, within the framework of national constitutions and laws, in accordance with their obligations under international human rights law and agreements.

Historically, most national legislation—particularly as codified in Latin American countries—defined the formal and substantive requirements for the creation of such private entities, as well as other aspects of their operation and dissolution, in common civil law, establishing a neutral legal framework. That is also the case in countries with a legacy of common law, such as the Caribbean countries, Canada, and the United States. However, for close to two decades now, the region has been undergoing a process of transformation of these legal frameworks, going from civil law to administrative law and in some countries imposing undue restrictions, excessive controls, vague and discretionary requirements, and ambiguous and discretionary powers in the hands of executive branch agencies. This has had a particular impact on the legal framework that governs the various phases of the life cycle of nonprofit civil entities.

In this context, it is necessary to move forward with the process of systematizing and developing inter-American principles and standards on the legal framework for the creation, operation, financing, and dissolution of nonprofit civil entities, so as to contribute to the harmonization of national laws in the region. To that end, under the direction of the Rapporteur on this issue for the Inter-American Juridical Committee (CJI), with support and technical assistance from the International Center for Not-for-Profit Law (ICNL), an extensive effort has been undertaken to compile, highlight, and analyze national laws in 35 countries of the region and compare them to international standards, with specific information related to the life cycle of civil society organizations: a) formation and registration of the organizations, b) operation, c) access to financing, and d) dissolution.

Meanwhile, in order to validate the information received, as well as to contrast existing rules and practices, two virtual events were held on December 1 and 2, 2021, to consult with academics and leaders of civil society organizations on the “Development of Inter-American Principles on the Legal Framework for the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities.” This effort had academic support from the Center for Advanced Studies of the Third Sector of the Pontifical Catholic University of São Paulo, Brazil, the Bolivian Catholic University (UCB) of La Paz, Bolivia, and ORT University Mexico. In addition, in early April 2022, this document will be validated in three subregional consultations with experts and specialists from Mexico and Central America, South America, and countries in the Caribbean.

This Progress Report, after this background section, includes a chapter that studies and compares national legislation related to the life cycle of civil society organizations in the region—creation, operation, financing, and dissolution. The document then closes with a chapter of conclusions and recommendations, proposing some guidelines and uniform principles to help harmonize national legislation in this area. The proposed guidelines are based on the existing national rules and practices at the regional and international level. At the end of the document are two annexes with tables, one on national legislative frameworks and the other on the international standards that have been identified.

2. The life cycle of nonprofit civil entities

The right to freedom of association is broadly protected in the majority of the constitutions of the countries of the region. However, in the development of legislation governing the life cycle of civil organizations, national laws have implemented different models, through a body of rules that generally tend to be scattered and ambiguous and end up being restrictive in the great majority of cases.

Moreover, implementation practices also tend to be diverse, depending especially on the political context, the strength of democratic institutions, and the full observance of the rule of law. Thus, we see cases in which, despite a favorable legal framework for creating organizations based on a notification

system, the political context and administrative practices have turned out to be restrictive to the operations of civil society organizations, contrary to international human rights standards. This study has also been able to establish that there are a wide variety of laws that affect the various aspects of the life cycle of a civil society organization: laws on income taxes, laws to combat money laundering and financing of terrorism, laws governing charities, development laws, laws on registering foreign agents, etc. An analysis of the legal environment for civil society organizations in a specific country must take into account this whole constellation of laws, and not only the law governing the creation and dissolution of such organizations.

There is one group of countries in which the Civil Code forms the legal basis that governs the main aspects of the life cycle of civil organizations, as in the case of Brazil, Colombia, Paraguay, and Peru. There are also mixed models, in which the Civil Code is the main law that undergirds the establishment of legal persons, especially foundations and associations, accompanied by other specific laws related to implementation and promotion; these are compatible with the civil model based on members' contractual freedom, such as in the case of Chile,⁶ Costa Rica,⁷ El Salvador,⁸ Honduras,⁹ Mexico,¹⁰ Panama,¹¹ and Uruguay.¹²

Some countries in the English-speaking Caribbean, such as Antigua and Barbuda, Dominica, and Jamaica,¹³ Bahamas,¹⁴ Barbados,¹⁵ Belize,¹⁶ as well as Guyana and Grenada, along with Trinidad and Tobago, Saint Kitts,¹⁷ and Saint Lucia,¹⁸ maintain a common law legal tradition, in which written laws (statutes or acts) are few and the law is for the most part built on judicial decisions in a system of precedents. "Companies Acts" and "Friendly Societies Acts" are the main legal framework governing the constitution of organizations, establishing common or equal procedures for the creation of companies or business associations, as well as civil associations and nonprofit entities, without discrimination based on the legal nature of these collective persons. The cases of Canada¹⁹ and the United States more closely resemble this group of countries but under a federal system, in which each state has its own body of laws.

⁶ Law 20.500 on Associations and Citizen Participation in Public Administration, as well as Decree 110/79 on the Granting of Legal Personality to Corporations and Foundations.

⁷ Law of Associations 218 of August 8, 1939, and its amendments, and also Regulations to the Law of Associations (Executive Decree 29496 of April 17, 2001). Foundations are governed by the Law of Foundations and its amendments, and also by the Regulations to the Law of Foundations (Executive Decree 36363 of April 17, 2001).

⁸ Decree 894 of November 21, 1996, Law of Associations and Nonprofit Foundations.

⁹ Decree 32/2011 of the Special Law for the Promotion of Nongovernmental Development Organizations, and Decree 253/2013, of the Law of Foundations and Community Associations.

¹⁰ Federal Law for the Promotion of Activities Carried out by Civil Society Organizations and its Regulations, complemented by state laws.

¹¹ See Executive Decree 62/2017. In addition, Law 25 of 1995 establishes rules that apply specifically to private interest foundations.

¹² Law 17163 of Civil Associations and Foundations.

¹³ The Companies Act and the Friendly Societies Act are the main laws for the establishment of private entities, whether these are for-profit or not-for-profit.

¹⁴ Civil society organizations are governed by the Non-Governmental Organisations Act, foundations by the Foundations Act of 2008 and its amendments, and nonprofit companies are governed by the Companies Act of 2010.

¹⁵ Section 2 of the Charities Act, Ch. 243, of 1985.

¹⁶ Civil society organizations in Belize are governed by the Non-Governmental Organisations Act.

¹⁷ The Companies Act and the Non-Government Organisations Act (NGO Act).

¹⁸ Non-Governmental Organisations Act 2006. There is also the nonprofit company, under the Companies Act of 2008, as well as the rules under the NGO Act (Section 36 (9)).

¹⁹ Federal laws for civil society organizations fall under the "Not-for-profit Corporations Act" (S.C. 2009, c. 23).

Meanwhile, in another group of countries—although in several of them, the general regulation of legal persons under private law is assigned to civil law—the creation, registration, and granting of legal personality, as well as the operation and dissolution of associations and civil entities are regulated by special laws which establish administrative procedures to this effect. Such is the case in Argentina,²⁰ Bolivia,²¹ Haiti,²² Guatemala,²³ Ecuador,²⁴ Nicaragua,²⁵ the Dominican Republic,²⁶ and Venezuela. The case of Venezuela is *sui generis*, as the country maintains the Civil Code as the basis for the existence of associations and foundations but has a scattered set of special regulations, ranked below laws, which allow the executive branch to have a broad margin of control over civil society organizations.²⁷ In Cuba, the creation of civil society organizations is governed by Law 54, on Associations, applied analogously to foundations, which do not have their own legal framework. In these cases, the authorization or approval of legal personality falls under the jurisdiction of bodies with a political composition, such as the executive branch, or in the case of Nicaragua, the Legislative Assembly, making them highly discretionary.

2.1 Creation

The Inter-American Commission on Human Rights (IACHR) has indicated that the free and full exercise of freedom of association “imposes upon the State the duty to create the legal and factual conditions for human rights defenders to be able to freely perform their work.... While States are free to regulate the registration and oversight of organizations within their jurisdictions...the right to associate freely without interference requires that States ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations.”²⁸ The IACHR has likewise indicated that “the States must also ensure that the registration of human rights organizations will be processed quickly and that only the documents needed to obtain the information appropriate for registering will be required. Domestic laws should clearly establish the maximum time frames for state authorities to answer requests for registration.”²⁹

In the opinion of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, “a ‘notification procedure’, rather than a ‘prior authorization procedure’ that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States. Under this notification procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created.” This is not a precondition for the association’s existence but “is rather a submission through which the administration records the establishment of the said association.”³⁰

²⁰ The Argentine legal framework on this matter is based on the Civil Code, but the rules governing registration are provincial, with requirements that are scattered and are implemented with considerable discretion.

²¹ Law 351 and Supreme Decree 1597 of 2013 and its amendments.

²² Law of 8.06.1921; Law of 23.07.1934 amended by the Law of 29.09.1953 (Foundations); Decree of 13.12.1982 amended by Decree of 14.09.1989 (Development NGOs).

²³ Law of Nongovernmental Organizations for Development (Decree 02-2003 and Decree 04-2020). Also, the Governmental Agreement of July 2021, of the Regulations on Development NGOs.

²⁴ Executive Decree 193/2017.

²⁵ Associations and foundations are regulated by the General Law on Nonprofit Legal Persons – Law No. 147. For foreign civil society organizations, it is the Foreign Agents Law and its Regulations.

²⁶ Executive Order 520 and Law 122-05 on Regulation and Promotion of Nonprofit Associations, governed by Regulation No. 40-08, dated January 16, 2008.

²⁷ Decree No. 677, Regulations on Foundations, Associations, and Civil Societies of the State and Oversight of Public Support of Similar Private Institutions, Official Gazette of the Bolivarian Republic of Venezuela No. 3.574, Law in the Defense of National Sovereignty and Self-Determination.

²⁸ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., December 31, 2011, paras. 157 and 163, and Inter-American Court of Human Rights, *Case of Baena Ricardo et al. v. Panama*, Judgment of February 2, 2001, Series C No. 72, para. 158.

²⁹ Id. IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 541 (Recommendation 18).

³⁰ United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27), May 21, 2012, para. 58.

2.1.1 Notification or prior authorization systems

One critical aspect related to the legal act of creating nonprofit civil entities has to do with the nature of the act: whether the registration is a “notification procedure,” in other words, a registration or recognition of previous act based on the will of the civil society organization’s members; or whether it is rather a “prior authorization procedure,” in which the civil society organization begins its legal life only when the State gives its approval. Under international standards, the “notification procedure” ensures that the birth of an association as a legal entity happens due to the will of its founding members, who then notify the State authorities of its creation. This involves a procedural step to register the association in the public record, without the need for a prior authorization or license to operate that would authorize its establishment.

From the comparative study, it can be concluded that, in general terms, the systems based on standards of civil law, both the codified and common law systems, tend to establish notification-type registration procedures, while the systems based on administrative law establish procedures that have the effect of prior authorization, which are further from international standards. The notification procedure is applied in several countries (Brazil, Colombia, Chile, Mexico, and Uruguay). The “prior authorization” procedure, meanwhile, follows a model in which the legal personality of these entities is based on the decision of the administrative authority, as is in the case in Bolivia, Guatemala, Nicaragua, El Salvador, Panama, Ecuador, Paraguay, or Venezuela.

2.1.2 Public entity responsible for recognition of legal personality

Applications for recognition of civil entities as legal persons are filed with different types of public agencies. In Argentina, such an application goes to the General Inspector of Justice (IGJ), an office of the Ministry of Justice and Human Rights, which is in charge of registration functions for business associations as well as civil society associations and foundations, if the entity’s legal seat is in the Autonomous City of Buenos Aires; otherwise, it goes to the offices of legal persons of each province in the country’s interior. In Brazil, the Civil Code (Law 10.406/02) establishes that the Office of the Public Prosecutor is responsible for oversight of foundations; this includes the capacity to authorize their creation, approve changes in statutes and directors, and decide to intervene in the foundation, in cases of deviation of purpose. It also includes oversight of funding and of activities by means of annual accountability reports. There is no oversight agency for associations.

In the case of Bolivia, the Legal Persons Unit of the Deputy Ministry of Autonomous Entities, an office of the Ministry of the Presidency, has the authority to grant and register legal personality to social organizations, nongovernmental organizations, foundations, and nonprofit civil entities that carry out non-financial activities in more than one of the country’s departments. In the case of Guatemala, the NGO Law (Art. 10) establishes the requirement to register in the REPEJU, the Ministry of the Interior’s Registry of Legal Persons. The entity’s legal personality takes effect with its inscription in the registry (see Art. 18, Civil Code, with the wording of Decree 4-2020).

As indicated above, in the countries of the English-speaking Caribbean, based on common law, “Companies Acts” and “Friendly Societies Acts” govern the establishment of legal persons under private law, establishing common procedures for the creation of companies or business associations as well as for civil associations and nonprofit entities. This equivalent treatment for legal persons has meant that some countries have better, less arbitrary registration practices, since we see that, generally speaking, there tend to be certain facilities in place or fewer requirements and set-up costs for establishing a company. Such is the case in Panama, where a corporation to create a banking entity could be set up in 48 hours, while the procedural steps for establishing a nongovernmental organization can take more than a year.³¹

³¹ Alianza Ciudadana Pro-Justicia, *Entorno Legal y Situación de las OSC en Panamá: Informe de país*, ICNL, 2015. p. 28.

In this area, the information collected indicates that several Latin American countries have different legal registries for civil society organizations at different public offices. With regard to that matter, Colombian law establishes that upon registration, civil society organizations become legal persons, and it is prohibited for “any authority to be able to demand any additional requirement for the creation or recognition of legal persons” (Decree 2150 of 1995, Art. 44). In some countries—for example, Mexico, Peru, and the Dominican Republic—civil society organizations may function without any other recognition, but there are additional administrative requirements to receive fiscal or tax benefits or public funding, such as having to register as tax-exempt or nonprofit entities or be approved by the Treasury to receive public funding.

As can be seen from the array of different public agencies in charge of the registration, recognition, and approval of the legal personality of civil society organizations, the problem is not so much where the agency sits in the State structure but rather its functions and capacity to exercise discretion over the creation of civil entities. In terms of implementation practices, the results of the consultation meetings held suggest that when these registries are under political agencies that are part of the executive branch, such as Ministries of the Presidency, the Interior, or Justice, they tend to be more discretionary and selective than when these public registries function with greater transparency and equality, based on previously established, reasonable criteria, such as when they are under the aegis of other bodies such as the judiciary or other types of agencies that are more autonomous. However, the risk of discretion persists in those countries that do not have a judicial branch that is independent from the political power. In this regard, States should establish autonomous, independent bodies equipped with sufficient resources and suitable staff who are recruited based on merits, in accordance with each State’s constitutional, organizational, and administrative structure, to promote and recognize the legal personality of civil society organizations and maintain an up-to-date registry based on applicable international standards.

2.1.3 State regulation and self-regulation of civil society organizations

Another key element has to do with the intensity of control over the creation, life, and internal governance of the organization. Some laws, in the framework of contractual freedom, leave it to the members to define these aspects in their statutes, as long as they comply with the requirements established in the country’s laws or codes and do not go against the public order. This is the case with Argentina, Costa Rica, and Mexico, as well as with the new legal provisions in Ecuador. In other countries, meanwhile, the administration is granted the capacity to intrude in the internal life of organizations, establishing clauses or content that the statutes must include, or granting discretion to the State to require civil society organizations to amend their statutes; this is the case in Bolivia, where if such observations are made, there is the possibility of challenging the decision in court.

The consultations have also identified intrusive regulation into aspects that should be established in the organizations’ statutes—for example, the requirement for gender parity on the governing board in Costa Rica and the requirement of alignment with the National Development Plan in Bolivia—which could affect civil society organizations’ program independence in addition to shutting down the opportunity for public criticism.

Other types of restrictions or legal barriers to the creation of civil society organizations have also been identified, such as, for example, imposing a minimum number of members, limiting who can be founders, and charging onerous official fees. In the case of Jamaica, for example, a society established under the Friendly Societies Act must have and maintain at least 21 members—an extremely high barrier. There is no membership barrier for constitution under the Companies Act, but the costs are higher. Civil society organizations should be free to promote and include members of certain races, genders, geographical areas, etc. The State, for example, has no justification for imposing a compulsory requirement to restrict the ability of a women’s civil society organization to have a board composed only of women; this is considered an intrusion into aspects of each organization’s composition.

2.1.4 Good practices in the notification system

Good practices have also been identified in the area of establishing and registering civil society organizations. One case that has been studied is the Republic of Chile's Law No. 20.500, on "Associations and Citizen Participation in Public Administration," dated February 16, 2011, which establishes for the first time a general, comprehensive regulatory framework on the right of persons to associate and to participate in various spaces of public administration.

Law No. 20.500 establishes a more expeditious system and, most of all, one that offers greater protection of the right of association. It is a decentralized system, in which the first intervention is at the respective municipality in which the organization is being created or whose statutes are being amended, followed by the Civil Registry and Identification Service, which is responsible for keeping the National Registry of Nonprofit Legal Persons as a single, national registry in which the following are recorded:

- Associations and foundations that have been constituted in accordance with the provisions of the Civil Code.
- Community organizations in operation, neighborhood boards, and community unions.
- Nonprofit legal persons governed by special laws.
- Acts that determine the composition of the leadership and management bodies of the registered legal persons.

The registration system is a singularly important step forward in the law governing associations in Chile. However, it should be noted that Law No. 20.500 was approved without provision for any funding needs for its implementation, so that both the country's municipal governments and the Civil Registry Service have had to take on new legal functions with the same personnel, professional resources, and technical means that they had before the law went into effect, which in practical terms causes some of the benefits under the new system to suffer.

The law also specifies that *"It is the duty of the State to promote and support the associative initiatives of civil society. The bodies of the State Administration shall ensure the full autonomy of associations and shall not adopt measures that interfere with their internal life. The State, in its programs, plans, and actions, shall contemplate the promotion of associations, ensuring objective and fully transparent technical criteria in procedures involving allocation of resources"* (Art. 2).

This legislative framework thus connects freedom of association with rights of participation and with public policies to strengthen civil society. On the one hand, it specifies that associations shall be constituted and become legal persons in accordance with the provisions of the Civil Code (Art. 5); on the other, it creates a repository and registration system, managed with technical autonomy, by which organizations that register become legal persons by mere operation of law, overcoming the bureaucratic hurdles and the risk of discretionary decisions that characterized the old system of granting legal personality. The law also creates a financial support fund for civil society organizations, governed by a standing, mixed council.

In the case of Uruguay, the legal forms created under the legal framework are civil associations and foundations, regulated by the Civil Code, as well as by Decree Law 15.089 of December 12, 1980, and Law 17.163 of September 1, 1999. The Ministry of Education and Culture has jurisdiction to recognize civil entities as legal persons, through its General Office of Public Registries, which exercises administrative control over civil associations and foundations; consequently, it keeps the public records of legal acts related to the creation, operation, dissolution, and liquidation of these entities.

Citizens have online access to the requirements;³² it is also possible to go into the system and monitor applications remotely via the Internet. For recognition of legal personality, applicants must basically present four volumes, certified by a notary, related to assistance, accounting, statutes, and acts. There is broad freedom, especially for civil associations, to define the content of their statutes. Aspects such as self-regulation, self-governance and internal operations, democratic decision-making, internal controls, and exercise of the rights and obligations of partners or members are defined in the statutes; these are then acts that are subject to public registration, for recording and disclosure purposes.

In the case of Costa Rica, the creation of civil entities is governed by the Civil Code and the Law of Associations No. 218, which specifies that legal personality is obtained with the registration of the statutes in the National Registry of Legal Persons, led by an Administrative Board. The board has seven members: the Minister of Justice, who chairs the panel; a practicing notary with recognized experience, appointed by the Minister of Justice; the National Director of Notaries; and one representative each from the Attorney General's Office, the Bar Association of Costa Rica, the College of Topographical Engineers, and the Costa Rican Institute of Notary Law. This has made it possible to put together an entity that is highly capable and has technical administrative management autonomy. In Mexico, civil law clearly establishes a system characterized by notification or declaration of the members to create a civil association. The procedure is not carried out at a government agency but in front of a notary. The organization has autonomy in defining its internal structure. There are other types of problems having to do with fiscal, tax, and funding aspects, but in terms of the association's establishment, the design is closely in keeping with international standards.

In the area of registration procedures, similar systems are seen in the case of Colombia, Peru, and Paraguay, where civil organizations are formed under civil law by means a document drawn up by a notary public and recorded in a public registry, which ensures disclosure of their legal acts and legal representation. In Colombia, civil organizations are recorded in the Registry of Nonprofit Entities, under the responsibility of Chambers of Commerce, private institutions delegated by the State to perform this public service.³³ In Paraguay, meanwhile, registration is done at the General Office of Public Registries and Legal Persons, a dependency of the judicial branch, and in Peru at the National Superintendency of Public Registries,³⁴ a decentralized, autonomous body of the judiciary.

We believe that the registration-type model—in which a public authority independently and competently recognizes the legal personality of civil entities by registering them in a public registry, in order to ensure rights with regard to third parties and disclose the organizations' legal documents—presents a better approach that is more in keeping with international standards, which specify that civil society organizations should begin their life as legal entities by means of notification procedures or procedures with declarative effect.

2.2 Operation

“While States are free to regulate the registration and oversight of organizations within their jurisdictions...the right to associate freely without interference requires that States ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations.”³⁵

“The States should refrain from promoting laws and policies that use vague, imprecise, and broad definitions of the legitimate motives for restricting the establishment and operation of human rights organizations.”³⁶

³² The requirements for establishing an association or foundation can be found at the following address: <https://www.gub.uy/tramites/inscripcion-asociacion-civil-club-fundacion>

³³ See Republic of Colombia, Decree 2150 of 1995, Decree 427 of 1996, Decree 019 of 2012.

³⁴ See Regulation on Registration of Legal Persons (Res. N° 038-2013-SUNARP-SN).

³⁵ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 163.

³⁶ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 165.

2.2.1 Regulation of determinations on activities

*“Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference....”*³⁷

With some important exceptions, laws in the region do not establish restrictions on the type of activities that civil society organizations can carry out, but rather allow them to fulfill different objectives and aims, whether of public benefit or mutual benefit.³⁸ In Mexico, for example, under the Federal Civil Code individuals may constitute associations “to fulfill a common purpose that is not prohibited by law.”³⁹ Legislation in Colombia, likewise, does not establish restrictions for natural or legal persons to establish entities to carry out activities to the benefit of their associates or third parties, or the community in general.⁴⁰ Along similar lines, Law No. 122-05 on Regulation and Promotion of Nonprofit Associations in the Dominican Republic indicates that associations are established to pursue “lawful, common purposes in the general or private interest.”⁴¹ In Caribbean countries such as Dominica and Grenada, the laws indicate that to be registered, an organization must restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting, or athletic nature, or the like, or to the promotion of some other useful object.⁴²

In another example, Law No. 20.500 in Chile establishes that persons have “the authorization to create associations that express the diversity of social interests and cultural identities.”⁴³ This law also establishes restrictions on the activities of organizations; borrowing terminology from Article 22 of the International Covenant on Civil and Political Rights, it prohibits “associations contrary to morals, to public order, and to the security of the State.”⁴⁴ Note how the same article uses an ambiguous term to establish additional restrictions: “associations may not carry out acts contrary to the dignity and value of the person, the rule of law, and *the general well-being of the democratic society*.”⁴⁵ This leaves to the authority’s discretion the determination of what activity does not meet the terms of this prohibition.

Looking at the region as a whole, there are laws that clearly contravene the international standards laid out above, such as the law in Bolivia. It establishes that civil society organizations must mention in their statutes their contribution to economic and social development.⁴⁶ The supreme decree that establishes regulations for the law requires that to fulfill this requirement, the organizations must specify “the scope of their activities designed to contribute to economic and social development, taking into account the guidelines established in national planning, national policies, and sector policies.”⁴⁷ In response to a survey in 2015, civil society organizations indicated that to accommodate their statutes to specify the organization’s contribution to the country’s social and economic development implied that

³⁷ United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27), May 21, 2012, para. 64.

³⁸ A public benefit organization is an entity organized and operated primarily or exclusively for the benefit of the public or some segment thereof. A mutual benefit organization is an entity organized and operated primarily for the mutual benefit of a defined group of individuals. *Guidelines for Laws Affecting Civic Organizations*, OSI/ICNL (2004), p. 103.

³⁹ Article 2670 of the Federal Civil Code, available at:

<https://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

⁴⁰ Article 633 of the Colombian Civil Code.

⁴¹ Article 32 of Regulation No. 40-08, dated January 16, 2008, on the Implementation of Law No. 122-05 on Regulation and Promotion of Nonprofit Associations in the Dominican Republic, G. O. No. 10457 of January 18, 2008.

⁴² See Companies Act, Section 328, Dominica, and Companies Act, Section 328, Grenada.

⁴³ Article 1, Law 20.500.

⁴⁴ Article 1, Law 20.500.

⁴⁵ *Ibid.* Emphasis added.

⁴⁶ Article 1, para. II, subparagraph 1), Law No. 351, March 2013.

⁴⁷ Article 11 of Supreme Decree 1597/13.

officials would exercise their discretion in reviewing the organization's objectives, goals, and even its mission, and would insist on changes before approving the registration.⁴⁸ This provision clearly does not allow civil society organizations to freely exercise self-determination regarding the activities they engage in.

Along a similar line, the law in Cuba establishes that a civil society organization may be denied legal personality when "its activities could be *harmful to the social interest*."⁴⁹ In another example, the law in Guatemala prohibits nongovernmental organizations from using outside funding to carry out activities that "*may alter the public order*." The violation of this prohibition may result in the cancellation of an organization's registration.⁵⁰ Ambiguous terms such as "*harmful to the public interest*" or "*alter the public order*" are problematic because they do not allow a civil society organization to unequivocally determine what activity would be harmful to the public interest or would alter the public order. This, in turn, allows the authority to exercise wide discretion in determining the activity that is prohibited.

2.2.2 The need to adjust to the requirements of a new law or to seek the State's recognition again

*"Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities."*⁵¹

The vast majority of the countries do not require civil society organizations to re-apply for registration or make adjustments to comply with new laws as a condition for maintaining their status as legal persons. However, a troubling trend has been observed in some countries in which new laws require already registered organizations to begin a new registration process at the same agency that granted them legal personality, or at a different government entity, as a condition to continue operating. The problem with requiring an organization to make adjustments in compliance with a new law or to renew its authorization to operate is that this can lead to arbitrary rejection or an interruption in its operations. The examples that follow illustrate this trend.

Laws in Bolivia and Guatemala require organizations to adjust to the requirements of a new law as a condition to continue operating. In Bolivia, the supreme decree that implements Law No. 351 requires that every organization that carries out activities in more than one department and had previously been granted legal personality must meet the provisions of the new law. Bolivian civil society organizations have called attention to the difficulties they face in trying to meet this requirement.⁵²

In Guatemala, Decree 4-2020 requires organizations that are already registered to update their information to comply with the law's requirements,⁵³ among which is the requirement to include in their name the identification of NGO, association, foundation, federation, or confederation, as the case may be, as well as the type of organization.⁵⁴ Although updating information could be seen as a simple procedure, the recent implementation of this provision has led to difficult problems for the organizations. Since the Registry of Legal Persons is located in the capital city, civil society

⁴⁸ Jocelyn Nieva and Claudia Guadamuz, [*Retos y Oportunidades para Promover Entornos Legales más Favorables para las Organizaciones de Sociedad Civil*](#). ICNL, October, 2015, p. 24.

⁴⁹ Article 8 of Law 54. Emphasis added.

⁵⁰ Article 13, Decree 4-2020. Emphasis added.

⁵¹ United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27), May 21, 2012, para. 62.

⁵² The civil society organizations also indicated that the high costs associated with this procedure required them to "make budget adjustments, because no donor will finance a change in statutes, even less so when [the organization] is already a legal entity."

⁵³ Article 23, Decree 4-2020.

⁵⁴ Articles 6 and 4 of Decree 4-2020.

organizations that operate in other areas have to allocate resources to travel from sometimes remote locations to complete the procedures. Errors in the organization's presentation of information, as well as inconsistent answers from registry staff, can result in delays and cost increases that are prohibitive for many of the organizations. Under this law, failure to comply with this obligation can lead to the cancellation of the organization's registration.⁵⁵ Another problem with these types of requirements is their periodicity. In Haiti, the law establishes that the certificate of authorization to operate is valid for two years, which means that the civil society organization has to renew the document at the Ministry of Labor and Social Affairs.⁵⁶

For its part, the Foreign Agents Law in Nicaragua requires an organization to obtain a new legal recognition from the State despite having previously become a legal person. Under this law, civil society organizations whose activities may be "financed or subsidized entirely or in part by foreign governments, capital, companies, or funds, whether directly or by means of third parties, whether physical or legal persons," must register with the Foreign Agents Registry.⁵⁷ Among the sanctions applicable to an organization that fails to comply with the requirement to register: fines, cancellation of legal personality without prejudice to criminal liability for crimes against State security, seizure of funds and assets, and the prohibition to carry out activities.⁵⁸

As noted above, requesting organizations to re-register or to renew their authorization to operate can result in interruptions in the organizations' activities. Bureaucratic administrative procedures, slow response times from officials, and high costs borne by the organizations to comply with these obligations all have a negative impact on their activities. This was the situation for organizations receiving international cooperation assistance in Peru, who had to renew their registrations with the Peruvian Agency for International Cooperation (APCI) every two years.⁵⁹ To obtain the renewal, the organizations had to submit to a monitoring procedure that could last for several months. Until the organization completed the monitoring procedure satisfactorily, it could not receive international cooperation funds, which affected its capacity to serve its beneficiaries. In light of this situation, a group of organizations showed APCI officials how these problems were primarily hurting the vulnerable population being served with those funds. This resulted in APCI eliminating the requirement for organizations to renew their registrations at that agency.⁶⁰

2.2.3 Requirements for information on organizations' operations

"The IACHR considers that even though it [is] legitimate to request information to non governmental organizations for statistical or tax purposes, or to update macroeconomic information on the country, in their reviews and requests for information from organizations, the States should not exceed the limits of confidentiality that human rights organizations require to be able to operate freely

⁵⁵ Article 23, Decree 4-2020.

⁵⁶ See information on how to register an association in Haiti at <https://www.enfositwayen.com/post/comment-enregistrer-une-association-en-ha%C3%Afti>.

⁵⁷ See Articles 3 and 4 of the Foreign Agents Law.

⁵⁸ See Articles 13 and 16 of the Foreign Agents Law.

⁵⁹ In May 2015, APCI issued Executive Director Resolution No. 085-2015-APCI-DE, amending the requirements for NGOs and foreign organizations that carry out international technical cooperation activities to renew their registration in the National NGO Registry and the ENIEX, respectively. Consequently, to renew their registration, these organizations had to (a) verify that APCI monitored the use of resources from non-reimbursable technical cooperation funds; (b) provide an annual management report and an annual plan for the following year's activities; (c) demonstrate compliance with APCI recommendations; and (d) prove that they have a current taxpayer identification number (RUC).

⁶⁰ Supreme Decree 16-2019-RE, Regulation on Infractions and Sanctions of the Peruvian Agency for International Cooperation (APCI), does not include the "non-renewal" of inscription in the registry as an infraction.

and independently, nor...condition the registration exclusively on the presentation of this information.”⁶¹

*“The Special Rapporteur warns against frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations. Controls need therefore to be fair, objective and non-discriminatory, and not be used as a pretext to silence critics.”*⁶²

*According to the IACHR, “funds that the organizations receive in the framework of international cooperation are not, in principle, public. Along these lines, based on the transparency argument, the guarantee of the right of access to information should not force organizations to disclose their funding beyond public resources or beyond activities related to such funding or with respect to the provision of a public service. This should not be understood as a barrier when an entity is required to reveal its private legal relations in the context of financial cooperation so that the State can carry out its function of investigating a crime or providing tax oversight.”*⁶³

In almost all the countries in the region, civil society organizations are required by law to file program reports or financial reports on their activities; however, the scope of the information required varies from country to country. Simple reporting requirements are observed in Argentina, where the Income Tax Law establishes that these organizations must file financial balance sheets; in the case of foundations,⁶⁴ the Civil and Commercial Code establishes that civil society organizations must file their action plans and base budgets with the Office of Legal Persons in the province where they are registered.⁶⁵ The law in the Dominican Republic⁶⁶ requires the filing of an annual sworn declaration with the General Office of Internal Taxes to report on gross income, liabilities, assets, contributions, and details about international donations received. In the Caribbean, the law in Antigua and Barbuda provides another example of simple requirements; civil society organizations must file an annual return that includes their assets and liabilities.⁶⁷

Although international standards indicate that States should refrain from promoting laws that use “vague, imprecise, and broad definitions” that would restrict organizations’ ability to operate, in several countries of the region there is a tendency to establish standing requests for information with which civil society organizations must comply. In the case of the Civil Code of Chile, associations and foundations may be asked to present to the Ministry of Justice “...the minutes of assemblies and board meetings, approved financial statements and reports, accounting records, inventory and salary records, and any other information related to the development of their activities.”⁶⁸

Similarly, in Mexico, civil society organizations that have a Single Registration Code (Clave Única de Registro, CLUNI)⁶⁹ must turn in annual reports on the activities they carried out and the fulfillment of their purposes, along with financial information about their situation, especially but not

⁶¹ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 177.

⁶² United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/23/39), April 24, 2013, para. 38.

⁶³ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 182.

⁶⁴ Article 18, Income Tax Law, Argentina.

⁶⁵ Article 199, Civil and Commercial Code, Argentina.

⁶⁶ Article 160 of Regulation 40-08. Civil society organizations must report on each of the contributions they received during the year (with names and addresses of donors) and give a detailed accounting of each of the international donations received, specifying information about the donor entity, amount, and programs and projects to which the funds were earmarked.

⁶⁷ Section 26, Friendly Societies Act, at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-184.pdf>.

⁶⁸ Articles 557 and 557-1, Civil Code of Chile.

⁶⁹ The Single Registration Code (CLUNI) is an essential instrument that gives civil society organizations access to support and incentives from the federal government and facilitates their ability to carry out their activities. See <http://www.corresponsabilidad.gob.mx/sistema/sirfosc/seccionpagina/contenido/seccioncontenido/Anexos/archivos/Anexo245.pdf>.

exclusively about their use of public funds. Moreover, they must “*provide any information that may be requested*” by a competent authority about their goals, statutes, programs, activities, beneficiaries, sources of funding, whether national or foreign or both, net worth, administrative and financial operations, and use of public contributions and incentives they may receive.”⁷⁰ Similar language can be found in a law in The Bahamas,⁷¹ by which an authority may request financial information from the organization at any time.

Other laws establish excessive reporting requirements about organizations’ financial activities, as well as frequent and onerous obligations to file reports. This is the case with the law in Haiti which requires civil society organizations, every three months, to file a copy of the credit notification issued by a bank certifying the deposit of foreign currency; they must also provide any delegate in the relevant ministries with information, documents, or records that facilitate the oversight, monitoring, and evaluation established in the law,⁷² among other requirements.

Among the examples of frequent, onerous, and bureaucratic reporting requirements, Nicaragua’s Foreign Agents Law stands out. Even though the law governing the constitution of nonprofit legal entities in Nicaragua establishes as the only obligation that the organizations send their balance sheet to the Ministry of the Interior at the end of the fiscal year,⁷³ organizations registered as foreign agents are subject to more extensive and frequent reporting requirements. The Foreign Agents Law requires organizations that may be “financed or subsidized entirely or in part by foreign governments, capital, companies, or funds”⁷⁴ to file detailed *monthly* reports on the use of the donations they receive, as well as on income and expenditures, payments, contracts, and activities linked to their performance as foreign agents.⁷⁵

The implementing rules and regulations for this law establish that once the monthly information filed by the foreign agent has been reviewed, the competent authority may request any *necessary* information to verify the use and application of the reported funds.⁷⁶ In this case, the rules do not establish time frames in which the competent authority must rule on whether the application or use of the funds was acceptable; meanwhile, the civil society organization is not able to determine precisely whether it should wait indefinitely for a response from the authority. This means that the authority can exercise discretion to hold up an organization’s operations indefinitely.

Although the laws reviewed for this section generally do not require the financial reports to be prepared by an accountant, in some countries the quality and type of reports that civil society organizations must file warrant hiring such services. Some laws require organizations to keep accounting records (Dominican Republic),⁷⁷ to file reports in line with generally accepted accounting principles (Chile, Guatemala, Mexico),⁷⁸ or to keep records of activities, which must be available at all times for inspection by the tax authority (Jamaica).⁷⁹ In Chile, when an organization’s total annual revenues exceed the limits the Ministry of Justice has defined by resolution, it must submit its accounting records, balance sheet, and financial statements to independent external auditors.⁸⁰

⁷⁰ Article 7, for the Promotion of Activities Carried out by Civil Society Organizations.

⁷¹ Section 22, Non-profit Organisations Act, 2019.

⁷² Article 28, Decree 14.09, 1989.

⁷³ Article 13, subparagraph f), Law No. 147, General Law on Nonprofit Legal Persons.

⁷⁴ Article 3, Foreign Agents Law.

⁷⁵ Article 7, Foreign Agents Law.

⁷⁶ Article 5, subparagraph e), Law on the Regulation, Monitoring, and Sanction of Foreign Agents, Ministerial Agreement No. 03-2021.

⁷⁷ Article 46, Law No. 122-05 on Regulation and Promotion of Nonprofit Associations in the Dominican Republic.

⁷⁸ Article 577-1, Civil Code of Chile; Article 11, Decree 4-2020 of Guatemala; Article 7, III, of the Federal Law for the Promotion of Activities Carried out by Civil Society Organizations.

⁷⁹ The Charities Act 2013, Section 27.

⁸⁰ Article 577-1, Civil Code.

Pursuant to international standards, information about civil society organizations' financial resources should not be public in nature unless the organizations execute public funds. The law in Chile meets this standard, as it requires associations that receive public funding to report on the use of those resources, either by publishing the information on their website or else by some other means.⁸¹ Chilean law also requires organizations of public interest to make their annual financial statements available in the same way.⁸²

Unlike the Chilean legal framework, laws in Colombia and Guatemala apply transparency requirements that go beyond disclosure of public resources. For example, the law in Colombia⁸³ applies disclosure requirements on nonprofit entities that seek to remain in the Special Tax Regime to obtain income tax exemptions and receive donations with tax incentives. These entities are required to prepare a financial statement and make it accessible to the public by means of a transparency platform.⁸⁴ For its part, the Guatemalan law governing the registration of nongovernmental organizations requires that they provide information on everything connected with their establishment, registration, regulations, oversight, and liquidation, and with their associates, making it available on the Registry of Legal Persons (REPEJU), which is available for public consultation, *with no restriction*.⁸⁵

It is worth remembering that while States may request information from civil society organizations, these organizations must respect confidentiality restrictions to be able to carry out their activities.⁸⁶ Furthermore, international good practices recommend that both donors and beneficiaries of civil society organizations remain anonymous, and recommend that any of the organizations' confidential or proprietary information be protected.⁸⁷ It has also been established that civil society organizations are often asked to provide information that States already have in their various records, such as tax information, balance sheets, social security payments, etc.⁸⁸

2.2.4 Anti-money laundering and anti-terrorist financing requirements applicable to the sector

“Measures to protect [nonprofit organizations or NPOs] from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights.”⁸⁹

⁸¹ Article 17, Law 20-500, Chile.

⁸² Article 17, Law 20-500, Chile.

⁸³ National Tax Law, available at <https://estatuto.co/>; see also

<https://www.dian.gov.co/impuestos/sociedades/ESAL/Memoria-Economica/Paginas/default.aspx>.

⁸⁴ See the example of this organization and the information it makes available to the public: <https://foro.org.co/politica-de-transparencia-rte-dian/>.

⁸⁵ Article 10, Decree 4-2020.

⁸⁶ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 177.

⁸⁷ *Guidelines for Laws Affecting Civic Organizations*, Section 8.6, p. 73.

⁸⁸ See, for example, ICNL, Global NPO Coalition on FATF, Mapping on Terrorism Financing Risk in Nonprofit Organizations in Member Countries of the Financial Action Task Force of Latin America: A Nonprofit Organization Sector Regional Report, pp. 48-53, <https://www.icnl.org/wp-content/uploads/Regional-Report-for-Final-09.24.2021.pdf>.

⁸⁹ Financial Action Task Force (FATF), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, Interpretive Note to Recommendation 8, Sect. A.2, February 2012 (Updated October 2021), available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>. FATF Recommendation 8 states, in part: “Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse...” The FATF recognizes that not all NPOs are high risk, and some may pose little or no risk. See Interpretive Note to Recommendation 8, Sect. C.5.

“Focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote accountability and engender greater confidence among NPOs, across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries.”⁹⁰

“States have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work. In order to ensure that associations are not abused by terrorist organizations, States should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws that prohibit acts of terrorism.”⁹¹

In addition to the financial and programmatic reporting obligations mentioned in previous subsections, some countries require civil society organizations to comply with special laws focused on anti-money laundering and countering the financing of terrorism (AML/CFT). These laws, in turn, are inspired by the global regulatory standards in that regard issued by the Financial Action Task Force (FATF) and summarized above. The obligations that apply to civil society organizations vary from country to country in terms of which civil society organizations are covered by the law and the due diligence and reporting measures they are required to comply with. A review of some of the region's AML/CFT laws below reflects the variety of approaches taken.

Country	How to identify civil society organizations subject to the law	The obligations that civil society organizations must comply with include ...
Costa Rica	<p><i>The law does not identify the civil society organizations subject to compliance, but rather the vulnerable activity:</i></p> <p>The activity of a nonprofit organization sending or receiving money from internationally designated at-risk jurisdictions or maintaining relations with foreign parent companies, branches or subsidiaries located there.⁹²</p>	<p>Obtain and retain information about the true identity of persons for whose benefit an account is opened, or a transaction is effected, when there are doubts that such customers may not be acting on their own behalf.</p> <ul style="list-style-type: none"> • Register and verify, by reliable means, the identity, representation, domicile, legal capacity, occupation or corporate purpose of the person, as well as other details on their identity, be they occasional or regular customers. • Maintain, during the life of a transaction and for at least 5 years from the date on which the transaction is completed, the records of the information and documentation required in this article. • Retain records on the identity of its customers for a minimum of 5 years. • Register on the form designed by the competent supervisory and control body, the entry or exit of transactions, including transfers to or from abroad, in local or foreign currency, equal to or greater than US\$10,000.00.

⁹⁰ *Ibid*, Sect. B.4(d).

⁹¹ United Nations Human Rights Council, A/HRC/20/27, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012, para. 70.

⁹² Obligated Parties, Article 15 *bis*, Law 8204, Costa Rica.

Guatemala	Any nonprofit legal entity that receives, administers or executes State funds and/or receives or sends funds from or to foreign countries. ⁹³	<ul style="list-style-type: none"> • Provide the Special Verification Office (Intendencia de Verificación Especial – IVE) with information related to financial, commercial or business transactions that may be linked to the crime of laundering of money or other assets, as well as any other information requested by the IVE. • Implement compliance programs and audits, including the designation of a compliance officer responsible for ensuring compliance with the law and the organization's programs. • Adopt the necessary measures to obtain, update, verify, and retain information about the true identity of third parties for whose benefit an account is opened, or a transaction is carried out. • Establish procedures to ensure a high level of personnel integrity and knowledge of employees' personal, employment, and financial background.⁹⁴
Mexico	<p><i>The law does not identify the civil society organizations subject to compliance, but rather the vulnerable activity:</i></p> <p>The receipt of donations by nonprofit associations and societies is considered a vulnerable activity and, consequently, donations must be identified according to the provisions of the Law: “the receipt of donations ... for a value equal to or greater than the equivalent of one thousand six hundred and five times the minimum wage in force. They will be subject to a Notice to the Secretariat when the amount of the donations is equal to or greater than the equivalent of three thousand two hundred and ten times the minimum wage in force.”⁹⁵</p>	<p>If an organization receives donations from the same person (cumulative over a six-month period) in an amount equal to or greater than 1,605 Units of Measure (equivalent to approximately \$143,840.1 Mexican pesos or approximately US\$6,987.65), it must prepare and keep files on the information of identified clients (donors) and users. If such donations are equal to or greater than 3,210 Units of Measure (equivalent to approximately \$287,680.2 pesos or approximately US\$13,975), they must notify the Financial Intelligence Unit.⁹⁶</p> <p>Organizations must also:</p> <ul style="list-style-type: none"> • Identify clients or users with whom they engage in the vulnerable activities and verify their identity based on credentials or official documentation, as well as obtain a copy of the documentation. • Obtain from the client or user participating in vulnerable activities a statement as to whether or not they are aware of the existence of the beneficial owner, and as applicable, obtain official documentation to identify them. • Custody, protect, safeguard, and prevent the destruction or concealment of information and documentation that substantiates the vulnerable activity, as well as that which identifies its clients or users.

⁹³ See amendment to Governmental Decision No. 118-2002 of April 17, 2002, Regulations on the Law against the Laundering of Money and Other Assets, Governmental Decision No. 443-2013, Art. 5(II)(k).

⁹⁴ Guatemalan civil society organizations must comply with a list of more than 20 obligations. See Law against the Laundering of Money and Other Assets, Decree 67-2011, Articles 19–25, 27–29, and 36. See Regulations on the Law against the Laundering of Money and Other Assets, Governmental Decision No. 118-2002, as amended by Governmental Decision 443-2013, Articles 6–7, 9–10, 12–19, 27, and 36.

⁹⁵ Article 17, paragraph XIII, Federal Law for the Prevention and Identification of Operations with Illicit Proceeds (LFPIORPI), Mexico.

⁹⁶ For the monetary equivalent of the thresholds established in this provision it should be considered that, according to the National Institute of Statistics and Geography (INEGI), the Unit of Measure in force for 2021 is \$89.62 Mexican pesos. See website of the National Institute of Statistics and Geography, INEGI <https://www.inegi.org.mx/temas/uma/>.

Venezuela	Foundations, civil associations, and other nonprofit organizations are regulated entities. ⁹⁷	Register in the Consolidated Register of Obligated Parties of the National Office against Organized Crime and Terrorist Financing (RUSO-ONCDOFT), which in turn requires the organization to submit, among others, the following documents: Articles of incorporation and bylaws duly registered with the Public Records Office and, as applicable, their amendments; proof of registration with the controlling body or entity to which it belongs by its nature; and a list of domestic or foreign organizations or entities from which it receives contributions, donations or gifts; ⁹⁸ submit to on-site verification of the information provided whenever the governing body deems it appropriate; ⁹⁹ update the documentation provided within 30 days of any changes and correct any defects within 5 business days; ¹⁰⁰ and provide the audited or certified financial statements for the last fiscal year within 15 days after year-end. ¹⁰¹
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These examples illustrate the significant impact that AML/CFT regulations can have on the operations of civil society organizations, and not simply in terms of their administrative reporting burden. The mandatory registration required by the administrative order in Venezuela, for example, may be unattainable for a civil society organization subject to unlimited investigations at its offices and discretionary revisions of requests with no established criteria for approval. In addition, there is a wide range of laws governing which civil society organizations are subject to these enhanced monitoring requirements. Compare, for example, the fact that in Costa Rica such measures apply only to civil society organizations that carry out financial movements in countries catalogued internationally as high risk, with the situation in Guatemala where all civil society organizations that operate with state or foreign funds are subject by law to additional controls. These requirements divert the financial and human resources of civil society organizations away from their missions. In this regard, it is essential to assess whether the obligations established in AML-CFT laws are targeted at civil society organizations identified on the basis of evidence as being at high risk for terrorist financing abuse are proportionate and applied without disrupting their legitimate work, in accordance with countries' obligations under both international freedom of association law and FATF standards.

2.2.5 Participation in the design of public policies

“[A]mong other liberties, associations have the freedom to advocate for electoral and broader policy reforms; to discuss issues of public concern and contribute to public debate; to monitor and observe election processes...”¹⁰²

“The freedom of associations to engage in activities related to the electoral process should therefore be guaranteed to all associations, whether they are apolitical in their means and operations, partially or totally supportive of the Government or express criticism of Government policies.”¹⁰³

⁹⁷ Art. 9.6, Organic Law against Organized Crime and Terrorist Financing (2012).

https://www.oas.org/juridico/pdfs/mesicic4_ven_ley_del_org_finan_terr.pdf. This law was interpreted nine years later in Administrative Order No. ONCDOFT-002-2021, available at <https://www.venezuelablog.org/wp-content/uploads/2021/05/Gaceta-Oficial-42.118.pdf>.

⁹⁸ Art. 6, Administrative Order No. ONCDOFT-002-2021.

⁹⁹ Art. 9, *ibid.*

¹⁰⁰ Art. 12, *ibid.*

¹⁰¹ Art. 13, *ibid.*

¹⁰² United Nations General Assembly, A/68/299, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, para. 43.

¹⁰³ United Nations General Assembly, A/68/299, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, para. 46.

Civil society organizations play an important role in the design and implementation of public policies; therefore, promoting their participation in the debate on these policies, from a broad and non-partisan perspective, is essential. The establishment of specific legal conditions to promote the participation of civil society organizations in the design of public policies is not a widespread practice in the region. However, the law in some countries accounts for the mechanisms created to promote participation in public affairs.

Examples of legislation that promote public participation include Mexico's Law of Citizen Participation for the Federal District (LPCDF). This law establishes several mechanisms and criteria for participation as well as the topics that can be influenced: citizen consultations, office of the citizen comptroller, and public hearings. Citizen consultations are mainly composed of forums or other spaces for consultation; the topics are of a territorial nature and, therefore, the participants in the consultation are usually connected likewise.¹⁰⁴ The citizen comptroller oversees effective and efficient budget spending.¹⁰⁵ Applications from citizens, professional and academic institutions, and civil society organizations are submitted to the Office of the Comptroller General of the Federal District. Although it is an honorary position, citizens and selected organizations have the right to participate with voice and vote in the decisions of the collegiate bodies of the Public Administration of the Federal District. Public hearings are the means by which citizens can receive information on the actions of the public administration,¹⁰⁶ submit petitions, proposals, or complaints in all matters related to public administration, and evaluate fulfillment of government programs and actions, among others. Another law—the Federal Law for the Promotion of Activities Carried out by Civil Society Organizations—establishes a Technical Advisory Council of the Promotion Commission, which is intended as a space for civil society to evaluate the policies and actions for the promotion of the sector.¹⁰⁷

Brazil has a variety of laws establishing different mechanisms for participation by civil society organizations in public policy formulation. Article 204 of the Brazilian Federal Constitution states that the population, represented by representative organizations, shall participate in the creation of public policies. The participation of civil society organizations in certain sectoral policies is governed by specific norms, for example, they participate in: the National System for Preventing and Combating Torture;¹⁰⁸ and the National Youth Council.¹⁰⁹ Likewise, the law provides for the participation of civil society organizations in Councils on the older persons,¹¹⁰ on public policies for black people,¹¹¹ and on the issues of drug use treatment and prevention.¹¹²

Finally, the Organic Law of People's Power of Venezuela, the purpose of which is to generate conditions for participatory democracy,¹¹³ is an example of a law that is not conducive to pluralistic public participation. This law led to the creation of communal councils that aligned themselves ideologically with the ruling party. As a result, the communal councils have promoted the exclusion of groups that do not espouse the party ideology from participation spaces, thus limiting their contribution to public debate.

¹⁰⁴ Article 50, LPCDF, Mexico.

¹⁰⁵ Articles 64 and 65, LPCDF, Mexico.

¹⁰⁶ Article 67, LPCDF, Mexico.

¹⁰⁷ Article 26, Promotion Law; Article 17, Regulations on the Promotion Law.

¹⁰⁸ Article 2, §2, X, of Law 12847/2013, Brazil.

¹⁰⁹ Article 9, §1, 11.129/2005, Brazil.

¹¹⁰ Article 6 of Law 8842/1994, Brazil

¹¹¹ Article 50 of Law 12.228/2010, Brazil.

¹¹² Article 20, VIII, of Law 12.852/2013, Brazil.

¹¹³ Article 1. Organic Law of the People's Power of Venezuela.

2.2.6 Activities in the digital space¹¹⁴

*“[F]reedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be viewed as the rule, and the limitations as the exception. The general norm should be to permit the open and free use of the Internet and other digital tools.”*¹¹⁵

Regulation of the activities of civil society organizations in the digital space is an emerging issue, whose growing relevance is largely due to the needs of a society that, as a consequence of the pandemic, has brought the exercise and defense of freedom of association into the digital milieu. In that regard, the review did not identify any examples of such rules in the vast majority of OAS member countries. However, Nicaragua's Special Law on Cybercrime provides an example of problematic law from the point of view of international standards.

That law establishes that a person will be subject to penalties if in “using information and communication technologies, they publish or disseminate false and/or misleading information that causes alarm, fear or anxiety in the population... if the publication or dissemination of false or misleading information damages the honor, prestige, or reputation of a person... incites hatred and violence, endangers economic stability, public order, public health or sovereign security.”¹¹⁶

The ambiguous wording of this provision does not allow a precise determination of the prohibited conduct, giving the authority broad discretion in its enforcement. Similarly, in contrast to *public order* or *public health*, which are generally recognized as legitimate objectives for restricting the right to freedom of association, *economic stability* or *sovereign security* are not recognized as such.¹¹⁷ Consequently, such restrictions do not conform to international standards and are therefore not justifiable.

A newspaper article that reported on the case of the first Nicaraguan citizen to be sentenced under this law referenced the discretion exercised by the authorities in enforcing it.¹¹⁸ In accordance with Article 30 of the Special Law on Cybercrime, the citizen was charged with spreading false or misleading news as a result of sharing information adverse to the government. In another example, an environmental activist was accused by the Nicaraguan Attorney General's Office of committing the same crime as a result of denouncing in the media crimes committed against indigenous inhabitants of the country's Caribbean Coast region.¹¹⁹ According to the press report, the Attorney General's Office charged the accused with attempting to create a “climate of insecurity and instability that endangers national sovereignty.”¹²⁰ The intimidating effect of the law and its enforcement negatively impacts the ability of civil society organizations to exercise their rights in the digital space. In that sense, the Special Law on Cybercrime represents a worrying model that could be emulated in other countries that show inclinations towards unjustifiably restricting the operations of civil society organizations.

¹¹⁴ See ACHR, Article 16; ICCPR, Article 2: “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.”

¹¹⁵ United Nations Human Rights Council, A/HRC/41/41, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 17 May 2019, para. 12.

¹¹⁶ Article 30, Special Law on Cybercrime,
[http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/803E7C7FBCF44D7706258611007C6D87?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/803E7C7FBCF44D7706258611007C6D87?OpenDocument)

¹¹⁷ ACHR, Article 16; ICCPR, Article 22.

¹¹⁸ <https://www.confidencial.com.ni/politica/todas-las-pruebas-y-testigos-para-condenar-a-margarito-alvarengason-policias-orteguistas/>

¹¹⁹ <https://www.articulo66.com/2021/09/08/amaru-ruiz-fundacion-rio-primer-activista-sociedad-civil-acusado-ciberdelito-denunciar-masacre-indigenas/>

¹²⁰ <https://www.articulo66.com/2021/09/08/amaru-ruiz-fundacion-rio-primer-activista-sociedad-civil-acusado-ciberdelito-denunciar-masacre-indigenas/>

2.3. Financing

“The Special Rapporteur has repeatedly underlined that the ability to seek, secure and use resources—from domestic, foreign and international sources—is essential to the existence and effective operations of any association, no matter how small.”¹²¹

[T]here must be an enabling legal framework that allows access to domestic or foreign financing without the need to obtain prior authorization and without imposing official restrictions on the process and, in addition, to obtain tax benefits and raise funds from the public without administrative impediments.

This section explores how the legal frameworks that govern civil society organizations affect their access to various domestic and international funding sources, as well as their ability to devote more resources to their missions as a result of preferential tax treatment. The right of civil society organizations “to set into motion their internal structure, activities and action programme” depends to a large extent on:¹²²

- the conditions applied to donations from foreign donors;
- the rules of play for accessing state funds;
- the ability to engage in economic activities for ensuring the sustainability of the organization;
- tax incentives for philanthropy; and
- the possibility of safeguarding resources through tax exemptions.

2.3.1 Regulation of foreign financing

[T]he IACHR considers that the scope of these bodies or agencies should be limited so that their powers are limited to executing and supporting the government’s international cooperation policies when the State has raised the funds, and not when the international cooperation funds are raised by and designated for civil society organizations.¹²³

“Protection of State sovereignty is not just an illegitimate excuse, but a fallacious pretext which does not meet the requirement of a “democratic society”. The expression ‘democratic society’ places the burden on States imposing restrictions to demonstrate that the limitations do not harm the principles of ‘pluralism, tolerance and broadmindedness’. Associations, whether domestic- or foreign-funded, should therefore be free to promote their views – even minority and dissenting views, challenge governments about their human rights record or campaign for democratic reforms, without being accused of treason and other defamatory terms.”¹²⁴

Apart from the requirement to report the receipt of funds in excess of a certain amount, as discussed in the previous section, most OAS member countries do not establish any prerequisites for civil society organizations to access funds from international sources. With some exceptions, the law of Caribbean countries is notable for not imposing prerequisites for civil society organizations to benefit from foreign resources. Belize, for example, requires civil society organizations to register in order to implement state projects funded by international cooperation,¹²⁵ but that rule is compatible with the

¹²¹ United Nations General Assembly, A/70/266, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 4 August 2015, para. 67.

¹²² See I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*, Judgment of February 2, 2001, Series C. No. 72, par. 156.

¹²³ IACHR/OAS, Second Report, para. 183.

¹²⁴ United Nations Human Rights Council, A/HRC/23/39, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, para. 32. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/133/84/PDF/G1313384.pdf?OpenElement>.

¹²⁵ NGO Law, Article 9.4 <http://www.belize-law.org/web/lawadmin/PDF%20files/cap315.pdf>.

interpretation of the IACHR cited above.¹²⁶ More problematic was the law establishing the Peruvian Agency for International Cooperation (APCI Law), which required civil society organizations receiving external funding to register, renew their registration periodically, and meet with extensive oversight requirements.¹²⁷ That law was amended in 2016 and 2018 to remove the registration and registration renewal requirements.¹²⁸

Nonetheless, there is a growing trend in the region of legal restrictions on the receipt of international resources by civil society organizations. The Trinidad and Tobago Non-Profit Organisations Act, 2019, for example, provides for fines and up to seven years in prison for civil society organizations and their comptrollers who solicit public or private donations from overseas (or locally) without the civil society organization being registered.¹²⁹

There are several examples of laws that prohibit civil society organizations from engaging in certain activities with foreign funding, but some prohibitions are so ambiguous that it can be difficult for all parties—civil society organization, donor, or public official—to determine what would constitute a violation. Guatemala's Decree 04-2020 falls into this category: it forbids civil society organizations that receive external funding from carrying out actions that “disturb public order,” among other restrictions.¹³⁰

An older law is Venezuela's 2010 Law for the Defense of Political Sovereignty and National Self-Determination, which prohibits civil society organizations from receiving foreign resources if they are constituted to “promote, disseminate, inform or defend the full exercise of the political rights of the citizenry,” without providing a definition of “political rights.”¹³¹

Finally, a one new trend is emerging in the region, as represented by Nicaragua's Foreign Agents Regulation Law,¹³² enacted in 2020. The Law requires all civil society organizations, its key personnel, and even companies and individuals who provide advertising services to it, to register as a “foreign agent” if they receive resources from international sources (Arts. 3, 15). Apart from being stigmatized, foreign agents are subject to extensive controls, such as prior registration of any donations (Art. 9), continuous supervision (Art. 10), disqualification from “intervening in matters, activities or issues to do with internal politics or political rights” (Art. 14), and severe penalties, such as dissolution, for violations (Art. 15). The Foreign Agents Regulation Law is contrary to the standards of freedom of association in terms of access to financing, as well as being a worrisome model for the region.

¹²⁶ See Second Report, para. 183.

¹²⁷ See https://cdn.www.gob.pe/uploads/document/file/279288/250656_Ley28925.pdf20190110-18386-[evew9h.pdf](https://cdn.www.gob.pe/uploads/document/file/279288/250656_Ley28925.pdf). The APCI Law can be compared to a series of proposed laws on international cooperation in Venezuela—debated in the legislature from 2006 onwards, including in 2021—that would require that all donations from international sources go through a Venezuelan government agency for disbursement. See <http://www.civilisac.org/civilis/wp-content/uploads/proyecto-de-ley-cooperacion-internacional-1.pdf>; <http://www.asambleanacional.gob.ve/noticias/preparan-ley-de-cooperacion-internacional-para-primer-discusion-en-plenaria>.

¹²⁸ See <https://www.icnl.org/resources/civic-freedom-monitor/peru>.

¹²⁹ See NPO Act, para. 22(1), (2), <https://www.fiu.gov.tt/wp-content/uploads/Non-Profit-Organisations-Act-2019.pdf>.

¹³⁰ Decree 04-2020, Art. 13, https://www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/492a2-04-2020.pdf.

¹³¹ Law for the Defense of Political Sovereignty and National Self-Determination, para. 3 https://www.icnl.org/wp-content/uploads/Venezuela_Leysober.pdf.

¹³² See <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/3306286cd4e82c5f06258607005fdf6b>. Note also a bill on the same subject debated in the National Assembly of El Salvador in 2021: <https://recursos.elsalvador.com/documentos/2021/11/11/asamblea-legislativa.pdf>.

2.3.2 Regulation of public financing

*One of the State's duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations. States should allow and facilitate human rights organizations' access to foreign funds in the context of international cooperation.*¹³³

*"While States are encouraged to facilitate public funding to civil society organizations working in development and poverty eradication, State funding schemes should preserve civil society independence, by being transparent, fair and accessible to all organizations, including informal groups."*¹³⁴

According to international standards, States have an obligation to promote the exercise of freedom of association through access to national funds, including public funds. However, many OAS member countries lack clear laws on the eligibility of civil society organizations to access public funds, impartial selection criteria, or transparent accountability mechanisms for the use of such funds.¹³⁵ In several of the countries studied, there are no regulations relating to access for civil society organizations to state funds (e.g. Jamaica and Nicaragua), while in others, the only requirement is to be registered in the Associations Register or with the Office of the Comptroller General (e.g. Bolivia¹³⁶ and Guatemala¹³⁷). These vacuums can contribute to flagrant cases of corruption¹³⁸ that are often costly in terms of effective management of state resources, public perception of the civil society sector, and frustrated expectations of communities who hoped to benefit from State-funded programs. An extreme reflection of these negative consequences can be seen in Mexico, where in 2019 an executive order was issued banning public funding of civil society organizations.¹³⁹

In contrast, several countries in the region have implemented regulatory frameworks for public financing of civil society organizations that could be considered and adapted to other contexts. For example, in the Dominican Republic, a regulation defines categories of public benefit or third-party service associations,¹⁴⁰ among others, that are eligible to receive funds from the National Budget (Article 86). In order to receive financing, they must be registered in the Register of Nonprofit Associations for their particular area of activity; carry out activities in areas declared as priorities by the government (health, education, environment, etc.); have been registered for at least one year; and be in compliance with their administrative, financial and tax obligations (Article 89). Detailed reports submitted every 90 days to the National Planning Office on the use of public resources are required for subsequent disbursements (Article 93). Brazilian¹⁴¹ and Chilean legislation¹⁴² also serve as models,

¹³³ Second Report, para. 179.

¹³⁴ United Nations General Assembly, A/74/349, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voulé, 11 September 2019, para. 53. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/276/22/PDF/N1927622.pdf?OpenElement>.

¹³⁵ *Ibid.*

¹³⁶ Art. 8 of Supreme Decree 29308 of 2007, <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/29308>.

¹³⁷ See <https://www.contraloria.gob.gt/index.php/asociaciones-fundaciones-y-ongs/>.

¹³⁸ See, for example, <https://archivosconfidenciales.com/corrupcion-en-ongs-ligadas-a-familiar-de-milton-benitez.html#:~:text=Una%20investigaci%C3%B3n%20realizada%20por%20Univisi%C3%B3n%20da%20cuenta%20de,con%20una%20amplia%20investigaci%C3%B3n%20realizada%20por%20fiscales%20anticorrupci%C3%B3n>.

¹³⁹ Circular No. 1 by President Andrés Manuel López Obrador, February 14, 2019: https://reunionnacional.tecnm.mx/RND_2019/sa/CIRCULAR%20UNO.pdf.

¹⁴⁰ Implementing Regulation No. 40-08, January 16, 2008, on Law No. 122-05 on Regulation and Promotion of Nonprofit Associations in the Dominican Republic <https://mepyd.gob.do/wp-content/uploads/drive/CASFL/Marco%20legal/Reglamento%2040-08.pdf>.

¹⁴¹ Law 13.019/14 http://www.planalto.gov.br/ccivil_03/ato2011-2014/2014/lei/113019.htm.

¹⁴² Law 19.862 <https://www.bcn.cl/leychile/navegar?idNorma=207438>.

with clear requirements as to eligibility, technical evaluation of proposals, and accountability in the use of public funds.

2.3.3 Permissibility of income-generating activities

*“[U]ndue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights as a whole.”*¹⁴³

Throughout the region, some civil society organizations engage in income-generating activities as a way contributing to their solvency while reducing their reliance on public or private donors. Generally, the legal frameworks of OAS member countries permit such economic activities by civil society organizations, provided that the income is used to advance the organization's purposes (although the levy of income taxes on such earnings varies; see Section 2.3.5, below).¹⁴⁴ In very few cases (Brazil¹⁴⁵ and Chile,¹⁴⁶ for example) the law limits the free exercise of freedom of association by requiring that economic activities be related to the organization's purpose — for instance, a folklore association could sell videos of its own performances, but could not sell commercial videos not related to folklore, even if they invest all revenues in the association's nonprofit and public-interest purposes. While there is no trend in the region toward limiting the permissibility of economic activities, there is growing interest in the region in advancing legal reforms to encourage civil society organizations to generate their own income as a way to strengthen their capacity to carry out public-interest objectives, including nonprofit “social enterprises.”¹⁴⁷

2.3.4 Regulation of philanthropic donations

*“States’ positive obligation to establish and maintain an enabling environment for associations extends to fostering the ability to solicit, receive and utilize resources. Some States do this by extending tax privileges to associations registered as non-profit entities. Such privileges may include exemption from income tax (for the recipient association and the donor) ...”*¹⁴⁸

The vast majority of OAS member states contribute to their obligation to promote freedom of association through tax incentives for philanthropy. Laws vary widely in their definition of eligible recipients of favorably treated donations. Cuba's law, for example, qualifies only “charitable, hospital, educational and sports centers, museums, [and] libraries”¹⁴⁹ for incentive donations, while Haiti's law

¹⁴³ United Nations Human Rights Council, A/HRC/23/39, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, para. 9.

¹⁴⁴ See, for example, Costa Rica's Associations Law, which states: “Associations may acquire all kinds of goods, enter into contracts of any kind, and carry out lawful operations of all kinds that are aimed at achieving their purposes.” (Art. 26).

http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=32764.

¹⁴⁵ <https://www.cjf.jus.br/enunciados/enunciado/145>.

¹⁴⁶ https://leyes-cl.com/codigo_civil/557-2.htm.

¹⁴⁷ See, for example, Da Breo and Babb, Caribbean Policy Development Centre, *Status of NGO Legislation in CARICOM: Towards a Policy Framework for Informing Enabling NGO Legislation*, pp. 43-45 (2018), available at <https://cpdcngo.org/download/cpdc-status-of-ngo-legislation-in-caricom-final-document/>; and ICNL, *Blurred Lines and Tough Choices: Jamaica's Complex Legal Environment for Civil Society Organizations and Social Enterprises and Implications for Reforms* (2018), available at <https://www.icnl.org/wp-content/uploads/Blurred-Lines-and-Tough-Choices.pdf>.

¹⁴⁸ United Nations General Assembly, A/70/266, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 4 August 2015, para. 79.

¹⁴⁹ Law No. 113 of the Tax System, Art. 200(d): <https://referenciajuridica.files.wordpress.com/2018/05/ley-113-y-decreto-308.pdf>.

includes a comprehensive list of civil society organizations eligible for such incentives.¹⁵⁰ Several countries provide tax benefits only to donors who direct their donations to civil society organizations certified under special laws: Canada¹⁵¹ and Mexico, for example.¹⁵² Antigua and Barbuda imposes requirements that effectively limit civil society organizations eligible for deductible donations: not only must they be approved by the Cabinet to receive deductible donations, but the donation must have a duration fixed in an agreement of at least five years.¹⁵³

Countries apply different formulas to calculate the incentive and the preferential treatment ceiling. In some countries, the rules are simple, as in Barbados, where a donor can deduct donations of up to 10 percent of their taxable income excluding the donation.¹⁵⁴ In St. Kitts and Nevis, for example, the tax treatment depends on the identity of the donor: corporate persons can deduct the entire amount of their donation to a registered civil society organization from their income taxes, but a natural person does not have the same right.¹⁵⁵ In Chile, the calculation of the incentive depends on the field of work of the beneficiary civil society organization: while donors in general can deduct their donation up to a limit of 5 percent of their taxable income,¹⁵⁶ a donor to a civil society organization devoted to research, development and dissemination of culture and art, or that provides services to low-income or disabled people, can subtract up to 50 percent of the donations as tax credit.¹⁵⁷

Although certification as a civil society organization authorized to receive tax-deductible donations brings benefits to organizations and their donors, it can also entail complex costs and limitations. In the case of Mexican civil society organizations registered as authorized donees under the Income Tax Law,¹⁵⁸ they must limit their administrative expenses to 5 percent of their annual expenses (Art. 138-A of the Law's Regulations), in practical terms a very low ceiling for any civil society organization, but particularly problematic for authorized donees, considering the extensive accounting, reporting, and tax receipt production requirements imposed on them by the Tax Authority (Servicio de Administracion Tributaria).¹⁵⁹ In addition, they cannot receive more than 10 percent of their profits from economic activities unrelated to their purpose (Art. 80 of the Law), a requirement considered “almost impossible” to meet in the opinion of the director of pro bono services for Mexican civil society organizations in a pandemic context and in a country without a philanthropic culture.¹⁶⁰ If that limit is exceeded by more than 50 percent, the applicable penalty is the total loss of the organization's assets, and if they do not renew their authorization in less than one year, the assets will be awarded to another authorized donee (Art. 80 of the Law).¹⁶¹

¹⁵⁰ Nonprofit foundations, charitable institutions, development assistance organizations, and all registered institutions with social, cultural, educational, and health purposes, among others, are eligible. Income Tax Law, Art. 24.13, <http://www.mef.gouv.ht/docs/Impot%20sur%20le%20Revenu%202005.pdf>.

¹⁵¹ Income Tax Law, Art. 149.1, <https://laws-lois.justice.gc.ca/eng/acts/i-3.3/page-141.html#h-308534>.

¹⁵² Income Tax Law, Art. 82,

https://www.gob.mx/cms/uploads/attachment/file/148942/12_Ley_del_Impuesto_sobre_la_Renta.pdf.

¹⁵³ Income Tax Law, Art. 10(h) <http://laws.gov.ag/wp-content/uploads/2018/08/cap-212.pdf>.

¹⁵⁴ Income Tax Law, Art. 24.B, [file:///C:/Users/JNieva/Downloads/Income_Tax_Act%20\(1\).pdf](file:///C:/Users/JNieva/Downloads/Income_Tax_Act%20(1).pdf).

¹⁵⁵ St. Kitts and Nevis, Non-Government Organisations Act, Art. 12(2): https://www.icnl.org/wp-content/uploads/Saint-Kitts-and-Nevis_nongovtact.pdf.

¹⁵⁶ Law 19.885, Art. 10, <https://www.bcn.cl/leychile/navegar?idNorma=213294>

¹⁵⁷ *Ibid.*, Art. 1(7).

¹⁵⁸ Mexico, Income Tax Law, Art. 82.

¹⁵⁹ See <https://www.sat.gob.mx/consulta/70078/conoce-las-principales-obligaciones-fiscales-de-las-donatarias-autorizadas>.

¹⁶⁰ Gasca Enrique, *El Reto de las Donatarias Autorizadas ante la Reforma Fiscal 2021, ProBonoMexico*. Retrieved at <https://comercial.reforma.com/libre/comercial/campanas/probono/6-El-reto-de-las-donatarias-autorizadas-ante-la-reforma-fiscal-2021.html>.

¹⁶¹ See <https://www.cemefi.org/servicios/noticias/6704-rubros-disposiciones-fiscales-a-partir-de-2021-para-donatarias-autorizadas>.

2.3.5 Regulation of the tax burden

*“States must guarantee the exercise of the right of association in the broadest possible manner, which includes the obligation to promote it. The IACHR has considered that one way to comply with this obligation is through tax exemptions to organizations dedicated to protecting human rights.”*¹⁶²

In almost all OAS member countries, at least some civil society organizations enjoy tax exemptions on at least some categories of income, which effectively promotes their exercise of freedom of association by allowing them to devote more resources to pursuing their missions.¹⁶³ However, the practical impact on the promotion of freedom of association of these exemptions varies greatly between countries, depending on which civil society organizations are eligible and which income categories are exempt.

According to international best practices, all legally constituted civil society organizations should enjoy income tax exemption for funds received from donors or public agencies through donations or contracts, as well as any membership fees.¹⁶⁴ The law in the Dominican Republic¹⁶⁵ and Honduras,¹⁶⁶ for example, is consistent with this best practice, in that it provides exemptions for formally constituted civil society organizations. Several countries provide income tax exemptions for categories of civil society organizations specifically registered as being of public utility or as charities, including the United States¹⁶⁷ and Peru.¹⁶⁸

In contrast to these examples, some countries limit exemptions to subsectors of civil society with activities in specific fields, for example, Chile, where civil society organizations “whose main and effective purpose is to provide assistance, even if not totally free of charge, directly to people of limited economic resources who cannot meet their basic needs” may be recognized as exempt.¹⁶⁹ Civil society organizations in several countries complain that public officials use excessive discretion in interpreting ambiguous criteria to deny exempt organization recognition to certain human rights organizations.¹⁷⁰

Instead of exempting civil society organizations on all their income as a measure to promote the exercise of freedom of association, the law in several countries applies different — and sometimes very complex — standards to profits from economic activities (see section 2.3.3 above). For example, in Argentina¹⁷¹ and Uruguay,¹⁷² only profits from economic activities related to the purpose of the CSO are exempt. In Antigua and Barbuda,¹⁷³ profits from economic activities are subject to income tax,

¹⁶² Second report, para. 187.

¹⁶³ According to our review, the few exceptions are Caribbean countries. The Bahamas does not levy income tax on any sector, while Grenada and St. Vincent do not offer income tax exemptions to civil society organizations.

¹⁶⁴ See *Guidelines for Laws Affecting Civic Organizations*, OSI/ICNL (2004), pp. 78–79 (available at https://www.opensocietyfoundations.org/uploads/dcec9eeb-44a4-4a23-88c0-c433a24b0d7f/guidelines_laws_english.pdf).

¹⁶⁵ Law 122-05 Regulation and Promotion of Nonprofit Associations of the Dominican Republic, Art. 50 <https://mepyd.gob.do/wp-content/uploads/drive/CASFL/Marco%20legal/Ley%20122-05.pdf>.

¹⁶⁶ Decree No. 170-2016 of Honduras, Art. 7(1), <https://www.tsc.gob.hn/biblioteca/index.php/codigos/699-codigo-tributario-decreto-no-170-2016>.

¹⁶⁷ Internal Revenue Code, section 501(c)(3), <https://www.irs.gov/charities-non-profits/charitable-organizations>.

¹⁶⁸ Income Tax Law, Art. 18 (c), <https://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.pdf>.

¹⁶⁹ Income Tax Law, Art. 40(4) <https://www.bcn.cl/leychile/navegar?idNorma=6368>.

¹⁷⁰ See, for example, Huerta Uñas, Vázquez del Mercado Castro and Ablanado Terrazas, *El Entorno Legal de las Organizaciones de la Sociedad Civil en México. Análisis y Recomendaciones*, pp. 4–5, <https://appleseedmexico.org/wp-content/uploads/2019/09/El-Entorno-Legal-de-las-OSCs.pdf>.

¹⁷¹ Art. 1(a), amending Art. 19(f) of the Income Tax Law, http://biblioteca.afip.gob.ar/dcp/REAG02001432_1971_11_12.

¹⁷² Decree 338/996, Title 4, Art. 9(H), <https://www.impo.com.uy/bases/todgi1996/338-1996>.

¹⁷³ Income Tax Act, Art. 8 (d), <http://laws.gov.ag/wp-content/uploads/2018/08/cap-212.pdf>.

while in Belize such profits are in principle taxable,¹⁷⁴ but civil society organizations may apply for an exemption. Dominica only offers exemption on income from economic activities in the cases of civil society organizations dedicated to workers with disabilities or music schools,¹⁷⁵ while in Guyana,¹⁷⁶ civil society organizations must pay taxes on all their income with the sole exception of profits earned from one or more annual fairs with a total duration of up to seven days.

2.4 Dissolution

The UN Special Rapporteur on Freedom of Association considers: “*The right to freedom of association applies for the entire life of the association. The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.*” In that regard, the Special Rapporteur “*values as best practice legislation that stipulates that such drastic measures be taken by independent and impartial courts.*”¹⁷⁷ “*The involuntary termination or dissolution of a CSO must meet the standards of international law; the relevant government authority should be guided by objective standards and restricted from arbitrary decision making.*”¹⁷⁸

In accordance with international standards, with respect to the end or termination of the legal life of civil society organizations, it is necessary to establish clear reasons, criteria, and procedures for forced dissolution (loss of legal personality). In that connection, laws based on civil codes generally make it clear that dissolution is decided by the members in accordance with their bylaws, by declaration of bankruptcy, or by a court decision following judicial proceedings at the request of the Public Prosecution Service, when they engage in activities contrary to public order. This is the case of Argentina, Brazil, Chile, Costa Rica, Mexico, Paraguay, and Uruguay.¹⁷⁹

By contrast, systems based predominantly on administrative law have established compulsory, unilateral and discretionary systems of extinction of collective nonprofits, establishing ambiguous grounds that can be qualified in an imprecise manner by executive branch officials who have broad punitive powers under the derived law.

This is the case in Bolivia. Article 19 of Supreme Decree 1597, which governs “Revocation of Legal Personality,” establishes that “*Legal personality shall be revoked,*” among other reasons:

- b) Due to a need or public interest declared by a law of the Assembly;*
- c) For engaging in activities other than those indicated in its bylaws (object, purposes, and scope);*
- g) For non-compliance with sectoral policies and/or regulations, subject to a report from the Ministry for the area.*

It also establishes an expedited administrative procedure for revocation, without adequate guarantees of due process and defense, and leaves the revocation of legal personality in the hands of the Ministry of Autonomies, which leads to the dissolution of the civil society organization.

¹⁷⁴ Income and Business Tax Act, Art. 8 (e), <https://bts.gov.bz/wp-content/uploads/2020/06/Cap-55-Income-and-Business-Tax-Act.pdf>; Non-governmental Organisations Act, Art. 13(1), <http://www.belizelaw.org/web/lawadmin/PDF%20files/cap315.pdf>.

¹⁷⁵ Income Tax Act, Art. 25 (n), <http://www.dominica.gov.dm/laws/chapters/chap67-01.pdf>.

¹⁷⁶ Corporation Tax Act, Art. 7(e), <https://mola.gov.gy/sites/default/files/Cap.%2081.03.pdf>.

¹⁷⁷ United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012.

¹⁷⁸ WMD/ICNL, *Defending Civil Society*, June 2012, p. 6.

¹⁷⁹ Luis Castillo Paulino, *Compendio sobre Asociaciones Civiles*, ANC, Lima, June 2012.

In Ecuador, Decree 193 of October 2017 was approved with the aim of streamlining the grounds for dissolution and establishing the right to challenge decisions that are arbitrary or fail to ensure due process, enabling “social organizations to file such administrative and judicial actions as they deem necessary to uphold their rights” (Art. 19). However, it maintains “engaging in partisan political activities reserved for political parties and movements registered with the National Electoral Council” as grounds for dissolution, which could restrict the right of citizens to participate in public affairs. Likewise, in the case of liquidation of its assets, it does away with the Liquidation Commission that was appointed by the Government for that purpose, and returns that procedure to the organization, in accordance with the provisions of its bylaws (art. 22).

In Panama, the current law empowers the State to forcibly dissolve an organization that has been accused, without prior presentation of evidence, by a third party of illicit activities.¹⁸⁰ In Argentina, the law allows the termination of a CSO when it is necessary or advisable for the public interest. In Nicaragua, dissolution can be established by decree of the National Legislative Assembly for “violating public order.”¹⁸¹ In the last two years, that political body has cancelled the legal personality of 107 NGOs in Nicaragua.¹⁸²

In El Salvador, civil society organizations can be dissolved by law or by executive decree, despite the will of their members, if they “compromise the security or interests of the State,” a provision that leave a wide margin of political discretion and institutional uncertainty. In the case of Peru, one of the grounds for dissolution is engaging in *activities contrary to good customs*, a criterion so broad and vague that it can be used at discretion.

Under most of the laws of Caribbean countries, in accordance with its common law aspect, all legal entities recognized in accordance with the Companies Act in force in each country are subject to the same rules of compulsory dissolution as all other types of companies. In the case of situations of dissolution by court order, the following grounds are provided: (a) authorization by the entity itself to be dissolved by court decision; (b) inactivity for one year; (c) inability to pay its debts; and (d) as a result of an inspection that verifies the equity situation, as well as the case of (e) commission of illegal acts, in addition to non-payment of taxes and established fees, with the guarantees of due process and effective defense assured.

In these countries, most of the established grounds have to do with the quality of civil society organizations' institutional management, and not with their programmatic performance, whose evaluations tend to be more political. This is the case of Antigua and Barbuda, Bahamas, Dominica, Guyana and Grenada, as well as Canada and Belize. That contrasts with Jamaica, where failure to maintain 21 members is grounds for dissolution of benevolent societies under the Friendly Societies Act.

There is also a new group of grounds that has been intensifying the dissolution regime in several countries in the region, by establishing forced dissolution as a criminal penalty for legal entities convicted of money laundering and terrorist financing. On the one hand, such penalties may be imposed in administrative proceedings by executive branch authorities, such as Financial Investigation Units, which in several cases normally lack the requisite independence and do not comply with the guarantees of due process. In an ambiguous context such as this, precise criteria and procedures should be developed that are in accordance with FATF international standards.

¹⁸⁰ Article 15 of Executive Decree 524 of 2005 states: “When there is information that an entity with legal personality is engaged in activities that are illegal or contrary to the objectives and purposes established in its statute, the Ministry of the Interior and Justice will take the necessary steps to revoke or dissolve the legal personality granted.” This provision is extremely broad and discretionary, since it does not specify the procedure in that regard.

¹⁸¹ GENERAL LAW REGARDING NONPROFIT LEGAL PERSONS, No. 147 of March 19, 1992.

¹⁸² Divergentes, [El cementerio de oenegés de Daniel Ortega](#), March 1, 2022.

Finally, a critical aspect to highlight regarding the compulsory dissolution or cancellation of the legal personality of civil society organizations is when its purpose is punitive, a situation further aggravated when civil society organizations have not previously been afforded the possibility to challenge, dispute, or appeal against such a decision in the context of due process, as in the recent case of dozens of Nicaraguan civil society organizations; as well as when such a penalty did not envisage a regime of progressive or gradual intermediate punishments proportionate to the infringement, as in the case of Guatemala, for example, where Decree 04-2020 authorized the imposition of administrative sanctions, including the cancellation of the organization, based on circumstances established in a simple regulation and at the discretion of an administrative authority without prior judicial review.¹⁸³

3. Final considerations

3.1 Conclusions and recommendations

In light of these principles, it has been found that in several of the region's countries the system of notification for the recognition of legal personality better guarantees the right and freedom of individuals to create, form, and register a civil association, since it is based on the autonomy of will and contractual freedom of its members. This report also shows that when the procedure for the creation and registration of a civil entity is regulated by an administrative legal framework under the control of executive branch entities, there is greater margin for discretion and political interference in the internal affairs of civil society organizations.

It can also be concluded that a law that is in line with international standards does not, in itself, need to a suitable registration system if it is not implemented correctly, such as in the case of Honduras, for example, where there has been an effort to improve the implementation of a quite favorable law, but its practices have not always been the most transparent and consistent with the established rules. Thus, the primary legal framework of many countries, such as the Civil Code, tends to establish a more neutral framework; however, secondary legislation, such as the rules on Foreign Agents Registry and the Anti-Money Laundering and Countering Terrorist Financing Law alter the nature of the legal framework. On a practical level, such regulations have a much greater influence on the operation, financing, and dissolution of associations. We see this in very many other countries.

3.2 Towards inter-American standards

- 1) The legal framework for the creation, operation, financing, and dissolution of nonprofit civil entities in the member countries of the Organization of American States is framed by the exercise of the right to freedom of association recognized in the American Convention on Human Rights. In that sense, it is a right of all persons to associate or organize themselves to participate in nonprofit activities for public or mutual benefit, even temporarily or without the need to obtain recognized legal status.
- 2) The life cycle of civil society organizations should be governed mainly by laws or codes passed by the legislature, and it is highly advisable to avoid regulatory dispersion.
- 3) Civil society organizations come into legal being by the will of their founding members. Registration will be governed by a notification rather than authorization regime, so that legal status is presumed upon receipt of the notification. Registration procedures should be simple, prompt, clear, non-discriminatory and non-discretionary. Where registration involves costs, they should be reasonable and proportional to those established for private for-profit entities, such as commercial companies. Civil society organizations that are already registered should not be subjected to adjustment or re-registration procedures a new regulation is introduced.

¹⁸³ Decree # 4-2020 approving the NONGOVERNMENTAL DEVELOPMENTAL ORGANIZATIONS LAW, and AMENDING DECREE 2-2003 OF THE CONGRESS OF THE REPUBLIC, AND THE CIVIL CODE, DECREE LAW 106.

- 4) The internal governance of civil society organizations should be established by their members in their bylaws, under conditions of equality and non-discrimination, with the principles of contractual freedom, self-regulation, and autonomy of will guaranteed; no limits other than those recognized by international human rights treaties and instruments; and no provisions established for intrusion in their organizational affairs.
- 5) The different forms or types of civil society organizations established by law may request and obtain the registration and recognition of their legal personality from a public agency. Such State agencies or offices must ensure their independence and autonomous management, and their personnel must be selected on the basis of professional merit and be covered by a system of administrative stability and career rules. The body that registers civil society organizations must perform its functions in an impartially, transparently and fairly, with full public disclosure of all its decisions.
- 6) A single agency should be in charge of the public registry of civil society organizations, and its services decentralized to make them more accessible to the public. If civil society organizations are required to register in other public records, that should not be a pre-condition for recognition of their legal personality. This should also cover the requirement of certificates, periodic reporting, or records of an administrative nature, which function in practice as another registration required for their existence, lest that paralyze the operation of civil society organizations.
- 7) The Law must establish precisely the requirements and documents to be submitted for obtaining and maintaining recognition of legal personality, as well as the procedures, deadlines, and costs of this process. Likewise, the specific and exclusive grounds on which the State may reject an application for legal personality must be established, a decision that may be challenged and reviewed in a judicial proceeding with sufficient guarantees of due process and of the right those concerned to mount a legal defense.
- 8) Civil society organizations may carry out their functions with a broad purpose and in diverse areas that are in the public interest and/or for the mutual benefit of their members, with the only constraint that they pursue lawful purposes. The State may request information on their activities for statistical purposes, but not to align their functions in such a way as to compromise the independence of the organizations or their objectives as set forth in their bylaws.
- 9) States have responsibilities to regulate civil society organizations in matters concerning illicit financial activities, but any requirements should be based on evidence of risk; targeted at organizations identified as high risk because of their characteristics or activities; proportionate to the risk identified; and implemented in accordance with their obligations under international human rights treaties and without limiting the legitimate work of the sector.
- 10) Civil society organizations have the right to seek and access financing for the achievement of their objectives, whether public or private, national or international; to generate their own income, without any restriction other than complying with the fiscal and tax regulations of each country; and to generate profits to be invested in their social purpose, preserving their nonprofit nature.
- 11) In the case of access to public funds, those funds will be governed by general rules of governmental accountability and oversight. When private nonprofit entities receive public funds, they also assume a responsibility for transparency and accountability in the use of those funds, but it does not transform a civil society organization into a public entity for the purposes of enforcing laws on access to public data.

- 12) Civil society organizations may access income or profit tax exemptions, without discrimination or restrictions other than demonstrating their nonprofit character in accordance with a specific, transparent procedure with previously established deadlines and requirements. Likewise, the tax system of States must provide a favorable legal and tax framework to promote the exercise of freedom of association through tax incentives for donations to nonprofit entities.
- 13) Sanctions imposed by States on civil organizations shall only be applied in limited circumstances legally established in advance, shall be progressive, necessary and strictly proportional to the seriousness of the harm, and shall only be applied by an impartial, independent, and competent court on reasonable, reasoned and proven grounds within a fair judicial process, with all the guarantees of defense and due process. Where sanctions are declared unlawful, civil society organizations shall have the right to reparation for the damage suffered, including restitution measures and guarantees of non-repetition.
- 14) The dissolution of civil society organizations shall be carried out in accordance with the provisions contained in their own bylaws. In the event of liquidation, their assets shall be distributed in accordance with their bylaws and internal regulations and may be transferred to other civil entities with the same purpose, but shall not be distributed among their members.

Annexes:

- I. [International standards](#)
- II. Tables on national laws
 - [Matrix by country 1](#)
 - [Matrix by country 2](#)